

**LODI CITY COUNCIL
SPECIAL JOINT CITY COUNCIL MEETING
WITH THE LODI PARKS AND RECREATION COMMISSION
CARNEGIE FORUM, 305 WEST PINE STREET
MONDAY, NOVEMBER 10, 2003**

A. CALL TO ORDER / ROLL CALL

The Special Joint City Council meeting of November 10, 2003, was called to order by Mayor Hitchcock at 7:04 p.m.

Present: Council Members – Beckman, Hansen, Howard, Land, and Mayor Hitchcock

Absent: Council Members – None

Present: Parks and Recreation Commissioners – Johnson, Sasaki, Schuh, Wall, and Chair Davis

Absent: Parks and Recreation Commissioners – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

B. TOPIC(S)

B-1 "Discussion regarding the Boosters of Boys and Girls Sports (B.O.B.S.) Organization"

Mayor Hitchcock explained that the meeting was called to discuss concerns that have been raised regarding the structural organization of the Boosters of Boys and Girls Sports (BOBS) and how it interacts with the City.

MOTION / VOTE:

Council Member Land made a motion, Howard second, to limit comments from the public to five minutes each and not allow speakers to cede their time to someone else.

DISCUSSION:

In answer to Council Member Beckman, City Attorney Hays stated that the motion was expressive of what the Council's operational rules were. He felt that it was merely an emphasis of Council's current rules of procedure relative to public comments.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, and Land

Noes: Council Members – Mayor Hitchcock

Absent: Council Members – None

Commissioner Johnson reported the following statistics related to the number of youth participants in each program:

- 1,700 – Soccer;
- 375 – Football and cheerleading;
- 650 – Softball;
- 1,200 – Baseball; and
- 270 – Basketball.

Commissioner Johnson explained that the Boosters of Boys Sports was founded in 1960 to assist the City in operating youth sports programs, primarily boys football, baseball, and basketball. In the mid-1980s it was recognized that more girls were participating in the programs, women were serving as coaches, and women owned businesses were sponsoring programs. In 1985 the first two women were admitted to the board and the name of the organization was officially changed to the Boosters of Boys and Girls Sports. The theory was that by placing all these activities under one organization there would be no conflict regarding funding, priorities, field usage, etc. The BOBS develops coaches, solicits team sponsors, conducts coaching clinics, organizes tournaments, and raises money through a variety of sources, concessions, raffles, etc. A significant portion of the funds generated by BOBS goes toward physical improvements, e.g. scoreboards, field lights, landscaping, backstops, bleachers, irrigation systems, concession stands, etc. The BOBS also provides scholarships for the needy and has held equipment exchanges.

Former Parks and Recreation Director Ed DeBenedetti recalled that BOBS started after W. C. Fuller saw a Little League game in Williamsport with 8 to 12 year olds playing baseball. He insisted that the Lodi Parks and Recreation Department organize a youth baseball program. The first Saturday that Mr. DeBenedetti and Tommy Atkins offered the program, 150 youth members attended. The program increased each year and the City was divided into six districts. When one of the baseball club managers suggested that uniforms be purchased, Mr. Fuller formed a committee (which included Bill Welsh and Charlie Black) to raise money to buy uniforms for all six teams. The City Attorney had advised that the money collected be kept in a special account. John Blakely (former Chief Administrator) appropriated funds for bats and balls. By 1962 BOBS had organized 72 baseball teams with 1,200 children participating. The organization continued to grow and soon included summer swim league, track meets, etc. Lodi Unified School District made its facilities available to the City, who in turn gave BOBS permission to use the school facilities. Mr. DeBenedetti could not recall any other time that an issue concerning the BOBS came before the City Council. He stated that Lodi is one of the few cities in the state that operate in this manner, i.e. with an organization such as BOBS.

In reply to Mayor Hitchcock, Mr. DeBenedetti stated that the only agreement he was aware of between the BOBS and the City was written in 1987.

In response to Council Member Hansen, Mr. DeBenedetti recalled that John Giannoni (a coach at Lodi High School) oversaw how teams were being managed. If problems arose they were handled internally or the Parks and Recreation Director would form a committee of four laypersons in the community and one Recreation Commissioner to resolve the situation.

Council Member Land commented that in 1958 he was one of the participants in the Lodi Little League Program. His first coach was Ed Heib. He recalled that his team lost every game; however, it had the cleanest uniforms because its sponsor was Star Deluxe Cleaners.

Commissioner Johnson stated that an example of one of the advantages of an organization such as BOBS in the community was the transition to bike air helmets, which were safer than plastic helmets. This was possible for all program participants in Lodi, due to BOBS funding. In other communities inequities exist in equipment, which can be to the detriment of the participants.

City Attorney Hays reported that the BOBS is a private non-profit corporation formed under the California non-profit public benefit corporation law. It is a separate legal entity with its own board of directors. The BOBS adopted bylaws on August 11, 1999. The first formal agreement between the BOBS and the City of Lodi occurred in February 1987. He stated that the City was basically contracting for recreation services that were funded, staffed, and promoted by BOBS in coordination with the City. Under the original agreement, BOBS had an exclusive operating agreement for concessions with the exception of two facilities, i.e. the Armory Park and softball complex. An addendum was made to the agreement in January 1993, which focused on how the concession stands would be staffed by the BOBS. Mr. Hays stated that he provided a report to Council in April 1998 advising that more formalization was needed with regard to the BOBS. He reported that under the current agreement the City agrees to indemnify BOBS up to \$250,000 for activities. Lodi has a mix of programs where the City is the provider of the program and the BOBS provides volunteers that perform services, which Mr. Hays explained, at that point in time they are City volunteers.

Council Member Hansen asked whether the indemnification creates a nexus between the City and BOBS. Mr. Hays replied that it creates a relationship, but does not create a situation that gives the City any power over the corporation. Further, he stated that just because an organization provides volunteers it does not make that organization subject to the City's control. Any time the City has volunteers doing work, it incurs an obligation to indemnify them.

In answer to Council Member Hansen, Parks and Recreation Director Goehring reported that BOBS carries its own insurance.

Mr. Hays expressed his opinion that the agreement could be clarified to better articulate what the City expects out of BOBS and what BOBS expects out of the City in terms of programming. He also recommended that BOBS not use a City facility for its address and should have its secretary, treasurer, or president be its agent for service of process, rather than Recreation Supervisor Tom Alexander. Mr. Hays stated that the Brown Act does not apply, because the Council did not create the BOBS, nor does it fund the organization.

In answer to Mayor Hitchcock, Mr. Hays explained that the indemnity is limited to BOBS volunteers when they are performing services in a City recreation program. They are not acting as volunteers in programs that are sponsored and run by BOBS.

Mr. Goehring reported that there are certain programs that the BOBS sponsors solely, e.g. the competitive soccer league tournament; however, most are City and BOBS sponsored programs. BOBS is also indemnified by Babe Ruth and Pop Warner, for example, when they are the sole sponsors of those particular sports events.

Mr. Hays noted that since the agreement with BOBS was entered into, the City has become self insured and the retention amount is now \$500,000. A review of the City's pool coverage indicates that it does provide coverage for volunteers. To the extent that BOBS individuals are functioning in a City program, they are covered once the City's self insured retention is exhausted. There is not an exclusion for BOBS.

Commissioner Wall pointed out that the organizational chart identified as Exhibit H in the agenda packet (filed) appears to show a connection between BOBS, the Parks and Recreation Department, the Recreation Commission, the City Manager, and the City Council. Though the BOBS may be exempt from the Brown Act, Mr. Wall reported that when he served on the board, the meetings were open to the public and minutes were posted. He cautioned Council against adopting BOBS, as it would change the organization.

In reply to Council Member Hansen, Commissioner Wall stated that he served on the BOBS board for 18 years. When problems arose, the Sports Committee comprised of the Vice President and Coordinators for each program would agendize the matter and meet in open session. The Executive Board reported back to the Board of Directors about any action taken.

Mr. Hays reiterated that the BOBS is a separate corporate entity formed under the California non-profit corporation laws of the State of California. He explained that this would not be available to the organization if the Council decided it wanted to have the power to form the board of the BOBS. He characterized Exhibit H as "a figment of someone's imagination" based upon the agreement that was entered into in 1987.

Council Member Land asked if the BOBS would be required to file Fair Political Practices Commission Conflict of Interests statements if it came under the direction of Council (as other boards and commission do), to which Mr. Hays replied in the affirmative.

Mr. Goehring reported that the BOBS organization operates under a non-profit 501(c) 3 status. It has a 25-member board and last revised its bylaws in August 1999. The City provides registration services and collects and deposits fees. Once a week the City submits a claim voucher to the Finance Department to reimburse the BOBS for any registration that occurred that week, minus the non-resident fees and new administration fee. The City provides, maintains, and operates the field space and facilities. Some of the facilities and fields are City owned and some are owned by the Lodi Unified School District (LUSD). Through the joint use agreement with LUSD the City is able to

accommodate the BOBS programs. The Parks and Recreation Department assigns a full-time paid staff member (Tom Alexander) as a liaison to the BOBS. The City pays for officials, as well as gym and field supervisors. Both the City and BOBS purchase sports equipment. Through an agreement, the City allows BOBS to handle the concessions. The City receives approximately 5% of the revenue generated from the concessions. The City also provides payroll services for employees. The BOBS has approximately 1,000 volunteers and operates with a budget in excess of \$300,000. It has donated close to \$350,000 to the City's facilities and park infrastructure over the past 8 to 10 years. Mr. Goehring read from an article written in 1995, in which former Parks and Recreation Director Ron Williamson was quoted as saying that over its lifetime the BOBS had donated almost \$7 million to youth sports in Lodi.

In response to Mayor Hitchcock, Mr. Goehring reported that BOBS board member Ray Huey is responsible for hiring and dismissing employees at the concessions. He read the following list of duties performed by Tom Alexander:

- Schedules games and practices for the recreation programs that are co-sponsored, e.g. baseball, basketball, and soccer;
- Deposits monies collected by the City into the BOBS account;
- Monitors the head coach selections for recreation programs;
- Orders equipment for the recreation programs and distributes to coaches;
- Writes bids for uniforms and equipment;
- Arranges sponsorships for recreational programs;
- Hires and supervises officials and field and gym supervisors;
- Helps coordinates special projects between the BOBS and the City;
- Helps coordinate tournaments hosted by the BOBS and the City; and
- Ensures that volunteers and the BOBS executive board are following through with their responsibilities.

PUBLIC COMMENTS:

- Jean Orosco stated that she was speaking as a private citizen and reported that she worked with the BOBS for over 30 years. She spoke in support of the organization and commended it for its contributions to the community and the dedication of its members. She stated that BOBS should be thanked for what it does, rather than asked to justify its existence.
- Ron Bernasconi disagreed with Mr. Hays' interpretation that the organizational chart is a "figment of someone's imagination." He pointed out that Mr. DeBenedetti just informed Council that when a problem arose, he as the Parks and Recreation Director, would form a committee including a member of the Recreation Commission. That process was consistent with Commissioner Wall's observation. Mr. Bernasconi stated that the agreement between the City of Lodi and BOBS does create the line of authority. He read the following excerpt from the agreement, "It is acknowledged and agreed that the Director of the City's Parks and Recreation Department shall be the authorized person to assign and direct members of BOBS in its participation of the sports and recreation program of the City." Mr. Bernasconi clarified that the indemnification provision is not an insurance policy, it is a promise to defend a lawsuit, and he read the following excerpt, "City agrees to hold BOBS, its officers, and directors free from any suit, action, or claim for damage." He stated that indemnifications are a way to manage risk when you give up control. In this situation, the City is giving the BOBS the right to use, occupy, and control City property and engage in functions with the public on its property, which he believed creates liability. He stated that the indemnification is one sided and does not deal with the nature of the relationship of the two parties to the agreement. In 1993 the Public Resources Code required that cities make specific inquiries into the criminal backgrounds of all volunteers. Mr. Bernasconi stated that both BOBS and the City shared this duty; however, the screening standard was never fully implemented. He asserted that

when the City indemnifies someone it has the ability to require them to adhere to a certain set of standards. To do otherwise is irresponsible to the taxpayer, i.e. it places a burden on the taxpayers and citizens of Lodi and there is no way to manage the risk. The BOBS has now taken the position that the Brown Act and the Public Resources Code does not apply to its directors. Mr. Bernasconi recalled that he previously submitted to Council a declaration signed by five current and former directors, which indicates otherwise.

In reply to Mayor Pro Tempore Howard, Mr. Bernasconi stated that he continues to believe that the BOBS needs to abide by the Brown Act because the City played a role in the creation of the organization by having City staff contribute time, resources, facilities, etc.

In response to Council Member Hansen, Mr. Hays stated that Public Resources Code Section 5164 does not currently exist; however, he planned to bring a policy to Council at the regularly scheduled Council meeting on December 17 which would re-implement the provisions in order to continue the program that the City has fully implemented with regard to background checks for those who meet the standard that is set out in the Public Resources Code. He read the following excerpt, "A city shall not hire a person for employment or hire a volunteer to perform service at a city operated park, playground, recreational center, or beach used for recreational purposes in a position having supervisory or disciplinary authority over any minor if that person has been convicted of certain offenses." Mr. Hays confirmed that the City requires background checks of those who are going to perform services at designated facilities.

Mr. Bernasconi read from the signed declaration, "We as former and current BOBS board members have or had disciplinary or supervisory authority over minors on city parks."

- Frank Alegre stated that he was a BOBS board member in the 1960s. He confirmed that former Parks and Recreation Directors sat in on meetings of the BOBS and handled problems when they arose. He believed that the City does have control over the BOBS by assigning a City staff member to them, registering participants in BOBS programs, assigning facilities, etc. He expressed disappointment with Mayor Pro Tempore Howard and Council Members Beckman and Land for voting to limit public comments to five minutes and noted that it has not been consistently enforced in the past.

Council Member Beckman stated that a Council policy has been in place for a decade regarding time limits for public speakers.

Mayor Hitchcock recalled that this Council and others in the past had not adhered to the time limit when new information was being introduced.

Council Member Land stated that former Mayors Mann, Warner, Nakanishi, Pennino, and Sieglock enforced the five-minute limit on public comments and former Mayor Pinkerton used a timer.

- David Akin stated that he served as a BOBS board member for 16 years. Mr. Akin mentioned that he sent e-mails to Council Members on this topic. He expressed hope that no changes would be made to the organization because it had run so smoothly in conjunction with the City over the years.

CLOSED PUBLIC COMMENT

In answer to Commissioner Sasaki, Mr. Hays explained that the conditions in the Public Resources Code only applied to those who were functioning in a supervisory or disciplinary role at the enumerated facilities, i.e. it only applies to those who put themselves in direct contact with youth at a park, playground, etc.

Commissioner Sasaki stated that BOBS board members who serve in the capacity of a Coordinator are at facilities where sports programs take place.

Commissioner Wall concurred with Mr. Sasaki and confirmed that board members often attend sports programs and could be in a position of having direct supervision.

Mr. Hays replied that this needs to be understood by the Parks and Recreation Department in order for the rules to be applied.

Mayor Hitchcock suggested that a committee be formed to develop a mutually agreed upon understanding of how the City and BOBS should operate.

Mayor Pro Tempore Howard was opposed to any action that would change the BOBS non-profit status or burden them with Conflict of Interest filing obligations. She did agree with strengthening the contractual relationship with BOBS and supported the City Attorney's prior recommendations.

Commissioner Johnson pointed out that only Mr. and Mrs. Bernasconi have raised concerns about the BOBS. No one else has come forward in support of the charges they have raised. He suggested that if the Council accepts the City Attorney's opinion, it should end the discourse with the Bernasconi's and let them pursue the matter through the court system if they choose to do so.

Council Member Hansen noted that there were other BOBS board members who resigned within a short period of time. He was told today by a former BOBS board member that a \$10,000 sponsorship of a major baseball tournament was withdrawn after they had read about discord amongst the BOBS organization. He voiced support for forming an ad hoc committee to look into the matter. He acknowledged the receipt of e-mails on this subject from the following individuals and noted that the majority were strongly in support of BOBS: David Akin, John Johnson, Blaine DeJong, Ron Bernasconi, Alice Synoground, and Catherine Mason. Mr. Hansen stated that he had also been informed that the vote for the current BOBS president was 10 to 11, which had not happened during previous elections of officers.

Chair Davis stated he was disappointed that issues could not have been resolved internally without having to conduct this joint meeting. Calling the meeting made it appear as though the City was opposed to the BOBS. He noted that BOBS has been an organization that has helped the City for many years.

Council Member Land concurred with Chair Davis and would not be in favor of any action that would change the BOBS organization. He did support improvement of the working agreement and the suggestion to form an ad hoc committee or task force.

Discussion ensued regarding potential members to serve on the committee.

Commissioner Sasaki requested that the topic be addressed on how to eliminate the possibility of having a child molester on the BOBS board.

Council Member Beckman recalled that the City Attorney had previously made a recommendation to clarify language regarding other boards and commissions and stated that he would like to see it accomplished before problems arise there as well. Mr. Hays indicated that he would look into it after the BOBS policy implementing the Public Resources Code is considered by Council.

MOTION / VOTE:

Council Member Hansen made a motion, Land second, that the Council create an Ad Hoc Committee to review the BOBS operation and provide recommendations to Council, chaired by Commissioner Bob Johnson and consisting of one other Recreation Commissioner and members from the BOBS board of directors, with the remaining makeup at the discretion of the committee chair.

DISCUSSION:

Mayor Hitchcock felt that BOBS should be able to choose who it wants to participate and it should make up 50% of the Ad Hoc Committee.

Mayor Pro Tempore Howard stated that her initial thoughts were to let the BOBS organization review its bylaws and make its own recommendations, and that the Council take the lead regarding recommendations to improve the contractual relationship. She felt that the Council should honor and recognize the distinction in the BOBS organization, i.e. its non-profit status.

Council Member Land suggested that the motion include a time frame of the first regularly scheduled meeting in March for the Ad Hoc Committee to return to Council with recommendations. Mr. Hansen agreed to amend the motion accordingly.

In reply to Mayor Hitchcock, Council Member Hansen stated that he advocated members of the current BOBS board serving on the Committee, as well as perhaps past Parks and Recreation Directors, past board members, and citizens who can give an unbiased honest opinion. In addition he suggested that the City Attorney and current Parks and Recreation Director participate in its discussions. He recommended that the Committee be comprised of 10 to 15 members and that interested persons contact the chair to apply.

VOTE:

The above motion carried by a unanimous vote.

C. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Frank Alegre noted that he had read an article in the newspaper regarding Council Member Land's suggestion that Council reduce its monthly salary by \$50. Mr. Alegre opposed the idea, stating that \$250 a month will not make an impact on the City budget and there is a lot of other money spent wastefully.

D. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 9:55 p.m.

ATTEST:

Susan J. Blackston
City Clerk